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GLASS, *et al.* Appellants, *versus* The Sloop BETSEY, *et al.*

CAPTAIN *Pierre Arcade Johannens*, the commander of a French privateer, called the *Citizen Genet*, having captured *as prize*, on the high seas, the sloop *Betsey*, sent the vessel into *Baltimore*; but upon her arrival there, the owners of the sloop and her cargo filed a libel in the District Court of *Maryland*, claiming restitution, because the vessel belonged to subjects of the king of Sweden, a neutral power, and the cargo was owned, jointly by Swedes and Americans. The captor filed a plea to the jurisdiction of the court, which, after argument, was allowed; the Circuit Court affirmed the decree; and, thereupon, the present appeal was instituted.

The general question was—Whether under the circumstances of this case, an American Court of Admiralty, has jurisdiction to entertain the complaint, or libel, of the owners, and to decree restitution of the property? It was argued by *E. Tilghman* and *Lewis*, for the appellants; and by *Winchester* (of *Maryland*) and *Du Ponceau*, for the appellee.

For the Appellants, the case was briefly opened, upon the following principles. The question is of great importance; and extends to the whole judicial authority of the United States; for, if the admiralty has no jurisdiction, there can be no jurisdiction in any common law court. Nor is it material to distinguish the ownership of the vessel and cargo; since strangers, or aliens, in amity, are entitled equally with Americans to have their property protected by the laws. *Vatt. B. 2 f. 101, 103. p. 267.* There can be no doubt that this is a civil cause of admiralty and maritime jurisdiction, and so within the very terms of the judicial act. Restitution, or no restitution, is the leading point; that necessarily, indeed, involves the point of prize, or no prize, as a defence for capturing; but if the admiralty is once fairly possessed of a cause, it has a right to try every incidental question. That the vessel is a legal prize, may be a good plea to the suit; but it is not a good plea to the jurisdiction of the court; and the captor by bringing his prize into an American port, has himself submitted to the American jurisdiction, which is in this instance to be exercised by the Judicial, not the Executive, department. *Const. U. S. art. 3. f. 1. Jud. Act. f. 9. Doug. 580, 84, 5. 592. 4. Carth. 474. 1 Sid. 320. 3 T. Rep. 344. 4 T. Rep. 394, 5. Skyn. 59. T. Ray. 473. Carth. 32. 6 Vin. Abr. 515. 3 Bl. Com. 108. 1 Vent. 173. 2 Saund. 259. 2 Keab. 829. Lev. 25. Sid. 320. 4 Inst. 152. 154. 2 Bulsh. 27, 8, 9. 2 Vern. 592. 3 Bl. C. 108. 2 L. Jenk. 755, 727, 733, 751, 754, 755, 780.*

For

For *the Appellees*, the captors (after some exceptions to the regularity of the appeal, which were waved by consent*) it was observed, that this is not a libel for a trespass, and so within the jurisdiction of the District Court; because a seizure *as prize*, is no trespass, though it may be wrongful. Nor can any act subsequent to the seizure for securing and bringing the prize into port, give jurisdiction, if the seizure does not. *Doug.* 571. Neither can the question be, whether the taking was so illegal as to amount to piracy; and therefore, that there ought to be restitution; for piracy can only be decided in the Circuit Court. But the question raised by the libel is a *question of prize*; and the decision of that must precede the subsequent one of *restitution*; which, so far from being the main and original question, is the *consequence* of the former. Admitting, then, the present capture to be unlawful, because it is neutral property, still the District Court has no jurisdiction of a question of prize by the constitution and laws of the United States, nor by the laws of nations.

I. The District Court has no jurisdiction by the Constitution and laws of the United States (which form the only possible source of Federal jurisdiction) for, although it is admitted, that by the 1st and 2d sections of the 3d article of the Constitution, and the Judicial act, the jurisdiction of the District Court extends to all *civil causes* of admiralty and maritime jurisdiction; yet, it is denied, that *prize* is a *civil cause* of that description; nor can the expression vest a power in the District Court to decide the legality of a prize, even by a citizen of the United States. A citizen, indeed, can only make a prize when the United States are *at war* with some foreign power; but being *at peace* with all the world, no such question can now be agitated; and, of course, no jurisdiction, in such a case, can exist in any of its courts. By comparing the act of Congress with the Constitution, it is obvious, that the former does not vest in the District Court, *the same*, or *so extensive*, a judicial power, as the latter would warrant. The Constitution embraces admiralty cases of whatever kind,—whether civil, or criminal, done in time of peace, or in time of war; but the act of Congress limits the power of the District Court to *civil causes* of admiralty and maritime jurisdiction; and the court can have no other, or greater power, than the act has given: *Civil causes* cannot possibly include captures, or the legality of a prize which can only be made *in time of war*. The words are used to denote that the causes are not to be *foreign* causes, or arising from, and determinable by, the

* The Appeal had not been presented to any Court or Judge of the United States, but to a Notary Public of Baltimore. The Court directed, that the waiver of the exception, by consent, should be entered, as they would not allow any judicial countenance to be given to the proceeding before the Notary.

1794. *jus belli*; but are such as relate to the community, arising in the time of peace, and are determinable by the *civil* or *uniprincipal* law; whereas *prize* is not a *civil* marine cause; nor is it a subject of *civil* jurisdiction. *Doug. 2 Ruth. Inst. 595.* The jurisdiction of the admiralty courts of *England*, and of the United States, arises from the same words; but it is manifest, that the latter has no other jurisdiction by law, than that which has been exercised by the *Instance* court in *England*, which is widely different from the *prize* court, though the powers are usually exercised by the same person. The *prize* court can only have continuance during *war*, and derives its powers from the warrant which calls it into activity. *Doug. 613. 2 Woodes. 452. Collect. Jurid. 72.* The *Instance* court derives its jurisdiction from a commission, enumerating particularly every object of judicial cognizance; but not a word of *prize*; any more than is contained in the act of Congress, when enumerating the objects of judicial cognizance in the district court. The manner of proceeding in these courts is totally different. The question of *prize*, or no *prize*, is the boundary line, and not the locality; and the nature of that question not only excludes the *Instance*, but the *common law*, and *all other courts*; so that whenever a cause involves the question of *prize*, and a determination of that question must precede the judgment, they will decline the exercise of jurisdiction and refer it to the *prize* court. Besides, Congress have not yet declared the rules for regulating captures on land, or water; (*Const. art. 1. sec. 8.*) and if the district court is now a court of *prize*, it is a court *without rules, to determine what is, or what is not, lawful prize*; for, the rules of an *Instance* court will not apply. If, upon the whole, the district court has no jurisdiction, under the act of Congress, of a case of *prize* by a citizen of the *United States*, it cannot have jurisdiction of a *prize* by a citizen of *France*, which is the question raised by the libel.

II. The District Court has no jurisdiction by the law, usage and practice of nations. The injury, if any, by the capture, is done by a citizen of *France* to the subjects of the King of *Sweden*, and to a citizen of the *United States*; and the question is, whether that injury is to be redressed in any court of the *United States*, who are in peace and amity, by treaties, with *France* and *Sweden*, and who are *neutral* in the present war? Admitting, in the first place, that *Sweden* is also at peace with *France*, and neutral in the war, the injury, so far, is an attack upon the sovereignty of *Sweden*, which *Sweden* alone can take cognizance of: A neutral nation has nothing to say to a capture, or any other injury perpetrated by a citizen of *France* on the subjects of *Sweden*. 2 *Bynk. 177. Vatt. b. 2. f.*

2. *f.* 54, 55. 4 *Bl. Com.* 66. *Vatt. b.* 2. c. 6. 18. *p.* 144. 249. 1794.
 to 252. 2 *Ruth. Inst.* 513. 4. 5. 9 *Wood.* 435. 439. *Lee*
on Capt. 45. 6, 7, 8, 2. If the government of the *United*
States could not interfere, *a fortiori*, its courts of justice cannot.
 The same reasoning applies to the case of the *American*, whose
 property is alleged to be captured; his application ought to
 be made to his government; the injury he complains of, being
 of *national*, not of judicial, enquiry; and, indeed, the very case
 is provided for in the treaty between the *United States* and
Sweden.*

Hitherto the case has been considered as it appears from the
 allegations in the libel; but it is proper likewise to consider
 the law as it arises upon the facts disclosed in the plea. This
 plea to the jurisdiction states formally the existence of war be-
 tween *France* and *England*; the public commission of the
 captor; the capture of the vessel and cargo on the high seas, as
prize, alledging the same to be the property of *British* subjects;
 and the bringing the prize into port, by virtue of the treaty
 between *America* and *France*. Upon this statement, two ad-
 ditional objections arise to the jurisdiction of the District Court:
 1st. That by the law of nations, the courts of the captor can
 alone determine the question of prize, or no prize; and 2d.
 That the courts of *America* cannot take cognizance of the
 cause, without a manifest violation of the 17th article of the
 treaty between the *United States* and *France*.

I. The right of a belligerent power to make captures of the
 property of the enemy is incontestible; and to enforce that
 right, the law of nations subjects the ships of neutral nations
 to search, and, in cases of justifiable suspicion, to seizure and
 detention; when the event of the enquiry, if an acquittal is
 pronounced, will furnish the criterion of damages. *Doug* 571.
 By capture the thing is acquired not to the *individual*, but the
state; and the law of nations gives, as to the external effects,
 a just property in movable or immovables, so acquired, whether
 from enemies, or offending neutrals; and no neutral power
 can be permitted to enquire into the *justice* of the war, or the
legality of the capture. 2 *Wood.* 446. *Vatt. b.* 3. *f.* 202.
Lee on Cap. 82. The great case of the *Silesia* loan is a decided
 authority in support of this argument. It is there expressly
 stated "that prize, or no prize, can only be decided by the
 admiralty courts of that government to whom the captor
 belongs;" and, consequently, "the erecting of foreign juris-
 dictions elsewhere to take cognizance thereof, is contrary to
 the known practice of all nations, in like cases;—a proceed-
 ing which no nation can admit." *Collect. Jurid.* That an
American

* See the second separate article.

1794. *American* is a party to the suit, can make no difference; because, if the jurisdiction does not exist, it cannot be assumed, or exercised, in any case. In proof of the practice innumerable authorities may be adduced; from which, however, the following are selected: Treaty of 1699 between *Great-Britain* and *Denmark*;—of 1763, between *Great-Britain*, *France* and *Spain*;—of 1753, between *Great-Britain* and *France*;—of 1786, between the same parties; and the several treaties between the *United States*, and *Holland*, *Sweden*, and *Prussia*, respectively. *Har. Law Tracts* 466. *Lee on Capt.* 238. *Doug.* 616.

If, as already has been shewn, the District Court is not vested with any separate power as a *prize court*, neither can it on the *instance* side of its admiralty jurisdiction, take cognizance of the question of prize, upon any principle or usage, heretofore received as law. The question of prize is to be determined by the *jus belli*; whereas the instance court is a court of *civil* jurisdiction, regulated by the *civil law*, the *Rhodian law*, the *laws of Oleron*, or by peculiar municipal laws and constitutions of countries, towns, or cities bordering on the sea. It is not bounded by the locality of an act; but regulates its decisions by the laws peculiar to the nation by which it is constituted, in matters happening on *the sea*, which, if they had happened on land, would have been cognizable in the common law courts. 1 *Bac. Abr.* 629. 1 *Com. Dig.* tit. "*Admiralty*." *E.* 12. 4 *Inst.* 134. But a *tort* on the high seas being merged in the capture as *prize*, the instance court cannot have jurisdiction, unless the main question is at rest, which will never be the case, whether the libel is for restitution, or condemnation. 2 *Lev.* 25. *Carth.* 474.

It is urged, however, that the captor has by his own act, in bringing the thing seized into port, and coming *himself* within the territory of the *United States*, made it necessary to proceed in the present form. But the original act derived its quality from the intention of the seizure, which was *as prize*; and the law precludes any court from deciding on the incident, that had no jurisdiction of the original question: *The case of the Silesia loan.* *Coll. Jurid.* Before the bringing into port, the legality of the capture was triable only in the *prize courts of France*; the bringing into port was lawful by the law of nations; and if the *American* courts had no jurisdiction at the time of the capture, a subsequent lawful act could give none. 1 *Lev.* 243. 1 *Sid.* 367. 2 *Lev.* 25. *Carth.* 474. The cases cited by the appellant's Counsel, do not militate against this doctrine. The cases in 2 *Sand.* 259. 1 *Vent.* 175. *Sid.* 120. did not involve the question of prize; the sole controversy was, whether the taking of the vessel was piratical, or not, and

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and whether a subsequent sale on land transferred the jurisdiction from the admiralty to the common law courts. The observation of Justice *Blackstone* (3 *Bl. Com.* 108.) is not supported by the authorities to which he refers; and evidently arose from inadvertancy, or inaccuracy, of expression. *Palachés* case, 4 *Inst.* 154. 3 *Bulf.* 27. 8. 9. was founded on particular statutes, which facilitated the mode of obtaining restitution of goods *piratically seized*; the question of prize never occurred in the investigation. *Sir L. Jenkins* reports a number of cases before the *King in council*, upon captures within the limits of the government; but they do not instance the exercise of any judicial authority in effecting restitution. If the act of bringing *the thing* into the territory gives any jurisdiction, it is to the *sovereign*, not the *judicial*, power. 2 *Wood.* 439. And the captain of the *French* privateer has done *no act*, which can authorise the exercise of jurisdiction *over his person*. The rule authorising the exercise of jurisdiction over persons coming within the limits of a country, has been narrowed down, by the voluntary law of nations, to cases where there is either a *local allegiance*, or *voluntary submission*. To this source might be referred the right of a government to punish faults, and decide controversies, between *strangers*, or between *citizens and strangers*: but such state has no right *over the person of a stranger*, who still continues a member of his own nation. *Vatt. b. 2. s. 106. 108.* Local allegiance is not due from a stranger brought in *by force*, or coming *by licence*; nor, if it does exist, does it give jurisdiction over faults committed out of the country, *before a residence*. *Vatt. b. 4. s. 92.* The captors, in the present case, came hither, by licence, under the sanction of a treaty; and, therefore, it cannot be presumed, that they intended to submit to the municipal authority; unless the presumption arises from the treaty: It does not so arise from affirmative words; and any implication is rebutted by the provision of the treaty, that they shall be at full liberty to depart. But, on the other hand, the principle on which depends the right of the country of the captors to decide, whether the property captured is lawful prize, is, briefly, *because the captors are members of that country, and because it is answerable to all other states for what they do in war.* 2 *Ruth. Inst.* 594.

11. The interference of the American courts will be a manifest violation of the 17th article of the treaty with France. The terms of the treaty are clear and explicit, that the validity of prizes shall not be questioned; and that they may come into, and go out of, the *American ports at pleasure*. To decide in opposition to a compact, so unequivocal and unambiguous, would

1794. would endanger the national tranquility, by giving a just and honorable cause of war to the *French Republic*.

For the Appellants, in reply. The arguments of the opposite counsel, present three objects for investigation: 1st. Whether the treaty between *France* and the *United States*, prevents any arrest of the vessel and cargo, under the authority of our government? 2d. Whether the District Court is a prize court? and 3d. Whether, even if it is a prize court, the remedy, in the present case, ought not to be sought through the executive, instead of the judicial, department?

I. The 17th article of the Treaty expressly extends only to "ships and goods taken by *France* from *her enemies*;" and being in the affirmative, as to enemies, it affords a strong implication of a negative as to neutrals and *Americans*. If, indeed, the citizens of *France* may keep a *neutral*, as a prize taken from *their enemies*, they may likewise, any where abroad seize *American* property and *American* citizens in vessels, and our government cannot interfere, even in our own ports, to prevent their being carried away; since, according to the opposite construction, the article prevents any interference in any case. The words, however, are directly against that construction; and even were it otherwise, the absurdity and injustice of the consequences which flow from it, would demand a different construction. *Vatt. b. f. p. 369. Gro. f. 22. p. 365. Puff. 544. f. 19. p. 1. rot. 358. f. 12. p. 2. Vatt. b. f. 282. p. 380. 381.* The sense must be limited, as the subject of the compact requires; and when a case arises, in which it would be too prejudicial to take a law according to the rigor of the terms, a restrictive interpretation should be used. *Vatt. b. f. 292. p. 391. Grot. f. 27. p. 361. Vatt. b. f. 295. p. 392.*

II. It is admitted that the Constitution gives to Congress, the power of vesting a prize jurisdiction in the Federal Courts; but, it is urged, that this power has not been exercised, because "all civil causes of admiralty and maritime jurisdiction," which are the terms of the investment, do not include prize causes. In examining the judicial act, however, to discover the intention of the legislature, it is plain that *civil* is used, upon this occasion, in contra-distinction to *criminal*. In other parts of the act, the word "*civil*" is dropped; (*sec. 12, 13, 19, 21.* and in the 30th section a provision is made expressly for a case of capture. The truth is, *Admiralty* is the *genus*, *instance* and *prize* courts are the *species*, comprehended in the grant of admiralty jurisdiction. *Doug. 580. 579. 582. 583. 594. 1 Sid. 367. 3 T. Rep. 323. 1 Dall. Rep. 105. 6. Lord Mansfield* does, indeed, say, that *prize* is not a civil and maritime cause, *Doug. 592*; but he, also says, that, it is a cause of admiralty jurisdiction. It is urged, that prizes can only be made in time of

of war'; but it is sufficient to observe, in answer, that, however just the abstract proposition may be, it is equally clear, that prize courts may proceed in time of peace, for what was done in time of war. *Doug.* 583. *Carth.* 474, 4 *Inst.* 154. *Bulf.* 13. 1 *Lev.* 243. *Hume's Hist. of Eng. vol. 7. p. 431.* 2 *Saund.* 259. 2 *Lev.* 25. It is further urged, that the power of declaring war, and making rules respecting captures, is vested in Congress; and that Congress has made no such rules; but, surely, whether the rules were made, or not, (and they are proper to be established for a division of captures,) the property of an enemy, in case of a war, would be lawful prize. Those rules can have nothing to do with creating a jurisdiction. Nor is it available to say, that this question results from war, and, therefore, is not of civil jurisdiction: for, taking the word *civil* as opposed to the word *criminal*, the consequence does not follow; and the distinction appears in 4 *Inst.* where the property was libelled *civiliter*, after an ineffectual attempt *criminaliter*.

III. In Europe, the *Executive* is almost synonymous with the *Sovereign* power of a State; and, generally, includes legislative and judicial authority. When, therefore, writers speak of the sovereign, it is not necessarily in exclusion of the judiciary; and it will often be found, that when the Executive affords a remedy for any wrong, it is nothing more than by an exercise of its judicial authority. Such is the condition of power in that quarter of the world, where it is too commonly acquired by *force*, or *fraud*, or both, and seldom by *compact*. In *America*, however, the case is widely different. Our government is founded upon compact. Sovereignty was, and is, in the people. It was entrusted by them, as far as was necessary for the purpose of forming a good government, to the Federal Convention; and the Convention executed their trust, by effectually separating the Legislative, Judicial, and Executive powers; which, in the contemplation of our Constitution, are each a branch of the sovereignty. The well-being of the whole depends upon keeping each department within its limits. In the State government, several instances have occurred where a legislative act, has been rendered inoperative by a judicial decision, that it was unconstitutional; and even under the Federal government the judges, for the same reason, have refused to execute an act of Congress.* When, in short, either branch of the government usurps that part of the sovereignty, which the Constitution assigns to another branch, liberty ends, and tyranny commences. The Constitution designates the portion of sovereignty to be exercised by the Judicial department; and

* See *Hayburn's Case*, 2 *Vol. p.*

1794. and, among other attributes, devolves upon it the cognizance of "all cases of admiralty and maritime jurisdiction"; and renders it *sovereign*, as to determinations upon property, whenever the property is within its reach. Those determinations must be co-extensive with the objects of Judicial sovereignty; which, according to the nature of the objects, will be regulated by common law, by statute law, and by the law of nature and nations. It is competent to execute its decrees; and can, if necessary, raise the *Possé Civitatis*. To the Judicial, and not to the Executive, department, the citizen, or subject, naturally looks for determinations upon his property; and that agreeably to known rules, and settled forms, to which no other security is equal. Why, then, recur to the executive, when the property, in the present instance, is on the spot, and in the hands of the judicial officers? By what rules is the executive to judge? What forms shall it adopt? And to what tribunal shall we appeal from an erroneous sentence? Will it not be *novi iudicii, nova forma*? As in *Milo's* case, the eye of the lawyer will, in vain, look for *veterum consuetudinem fori, et pristinum suorem iudiciorum*. But can the executive give complete redress by assessing damages; or accomplish equal and final justice, by ascertaining the rights of different claimants? Will the injured have its assistance, *of course and of right*, or as it may please the officers of State? And shall even American citizens be detained prisoners in our own harbours, depending for their liberty upon the will of a secretary of state? It will not be pretended, as the foundation for such a doctrine, that the executive is more independent, and less liable to corruption, than the Judicial power: And where shall be the boundary to executive interferences in questions of property, if it is admitted in the present case, which is merely a question of that description?

If the property were to be removed from, or if it had never been brought within, the reach of the judicial authority, and it should be divested by an unjust sentence abroad, then the citizen must, of necessity, avail himself of the executive authority, through the medium of negotiation, or reprisal. 1 *Bl. Com.* 258. 2 *Ruth. Inst.* 513, 4. 5. *Lee.* 46. 6. *Sir T. Ray.* 473. But, when the property is here, it is incumbent on the opposite party to show, that the general jurisdiction of courts, which applies, *prima facie*, to every thing within their reach, does not apply in the particular case of the property of one neutral power captured, and brought into the ports of another neutral power. In the cases cited from *Lee* 204. *Coll. Jur.* 135, 137, 153, there had been regular proceedings in *England*, which the king of *Prussia* attempted to undo, by erecting a court of his own to reverse them. *Lee.* 238, 9. And the obligation of the treaties that have

have been referred to, can only affect the parties; as they are matter of positive agreement. 1794.

But even in *England*, the judicial power, possesses the jurisdiction, which is asserted to belong to the judicial power of the United States. The question is restitution, or no restitution, involving the question of prize, or no prize, brought forward by the captured, and not by the captor. The question of prize or no prize, is emphatically of admiralty jurisdiction, exclusively of the common law; and must be determined agreeably to the law of nations. *Doug.* 580, 4, 5. 592, 4. *Carth.* 32. 474. 1 *Sid.* 320. 3 *T. Rep.* 344. 4 *T. Rep.* 394. 5. *Skin.* 59. *Ray.* 473. *Carth.* 32. The admiralty being once properly possessed of a cause, takes cognizance of every thing appertaining to it, as incident. 3 *Bl. Com.* 108. 6 *Vin. Abr.* 515. 1 *Ray.* 446. 2 *Ruth. Inst.* 594. Besides, all these cases clearly establish a distinction between a want of jurisdiction, and a dismissal of the libel for good cause. The case in 4 *Inst.* 154, and that of 2 *R.* 3. demonstrate, that where it is proved, 1st. That the sovereign of the complainant is in amity with our sovereign; and 2d. That his sovereign was in amity with the sovereign of the captor; the party may sue for restitution. The admiralty of *England* will decide, though a foreign power issued the captor's commission. 3 *Bulsh.* 27, 8, 9. 2 *Vern.* 592. *Sir L. Jenk.* 755.

The act of bringing the vessel into an American port, must be regarded as a voluntary election to give a jurisdiction; which they might otherwise have avoided. If the American courts have no jurisdiction, the captors avoid all jurisdiction, as they avoid that of their own country; for, the attempt by a French Consul to take cognizance in our ports, can never be countenanced. But shall they keep the vessel and cargo here *ad libitum*, and Americans, as well as neutrals, wait their motions? for, it is urged, that reprisals cannot issue till the courts of the captors have refused justice; and those courts cannot enquire into the merits till the vessel is brought within the jurisdiction of France.

THE COURT, having kept the cause under advisement for several days, informed the counsel, that besides the question of jurisdiction as to the District Court, another question fairly arose upon the record,—whether any foreign nation had a right, without the positive stipulations of a treaty, to establish in this country, an admiralty jurisdiction for taking cognizance of prizes captured on the high seas, by its subjects or citizens, from its enemies? Though this question had not been agitated, THE COURT deemed it of great public importance to be decided; and, meaning to decide it, they declared a desire to hear it discussed. *Du Ponceau*, however, observed, that the parties to the appeal did not conceive themselves interested in the

1794. the point ; and that the French minister had given no instructions for arguing it. Upon which, JAY, *Chief Justice*, proceeded to deliver the following unanimous opinion.

BY THE COURT: The Judges being decidedly of opinion, that every District Court in the *United States*, possesses all the powers of a court of Admiralty, whether considered as an instance, or as a prize court, and that the plea of the aforesaid Appellee, *Pierre Arcade Johannene*, to the jurisdiction of the District Court of *Maryland*, is insufficient: THEREFORE IT IS CONSIDERED by the Supreme Court aforesaid, and now finally decreed and adjudged by the same, that the said plea be, and the same is hereby overruled and dismissed, and that the decree of the said District Court of *Maryland*, founded thereon, be, and the same is hereby revoked, reversed and annulled.

AND the said Supreme Court being further clearly of opinion, that the District Court of *Maryland* aforesaid, has jurisdiction competent to enquire, and to decide, whether, in the present case, restitution ought to be made to the claimants, or either of them, in whole or in part (that is whether such restitution can be made consistently with the laws of nations and the treaties and laws of the *United States*) THEREFORE IT IS ORDERED AND ADJUDGED that the said District Court of *Maryland* do proceed to determine upon the libel of the said *Alexander S. Glass*, and others, agreeably to law and right, the said plea to the jurisdiction of the said court, notwithstanding.

AND the said Supreme Court being further of opinion, that no foreign power can of right institute, or erect, any court of judicature of any kind, within the jurisdiction of the *United States*, but such only as may be warranted by, and be in pursuance of treaties, IT IS THEREFORE DECREED AND ADJUDGED that the admiralty jurisdiction, which has been exercised in the *United States* by the Consuls of *France*, not being so warranted, is not of right.

IT IS FURTHER ORDERED by the said Supreme Court, that this cause be, and it is hereby, remanded to the District Court, for the *Maryland* District, for a final decision, and that the several parties to the same do each pay their own costs.

February